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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Systems Corporation

File: B-239190

Date: August 6, 1990

Robert M. Cambridge, Esq., for the protester.
Christopher A. Head, Esq., for Comptek Research, Inc., an interested party.
David D. Bach, Esq., Naval Sea Systems Command, Department of the Navy, for the agency.
Robert C. Arsenoff, Esq., Andrew T. Pogany, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where protester has, at best, established its technical disagreement with agency evaluators who concluded that awardee's score should not be downgraded as the result of alleged conflicts of interest arising out of the firm's performance on other contracts.

DECISION

American Systems Corporation (ASC) protests the award of a cost-plus-fixed-fee contract to Comptek Research, Inc., under request for proposals (RFP) No. N00024-90-R-5208, issued by the Department of the Navy for evaluative engineering services in support of 21 Combat Direction System (CDS) programs managed by the Naval Sea Systems Command.^{1/} The protester contends that the agency misapplied RFP provisions in evaluating organizational conflicts

^{1/} The particular evaluative engineering services sought by the RFP basically involve Reliability, Maintainability and Quality Assurance (RM&Q) assessments of technical and engineering products furnished under other contracts to insure their compliance with specification requirements.

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of interest allegedly arising out of Comptek's performance under other Navy contracts.^{2/}

We deny the protest.

BACKGROUND

The solicitation was originally issued on April 28, 1988, as RFP No. N00024-88-R-5234 and was amended twice before closing on June 9 of that year. Award was to be made to the offeror whose proposal was determined to be most advantageous to the government based on an evaluation of designated technical factors which, in the aggregate, were to predominate over cost considerations. Cost was to be evaluated for realism.

Since the RM&Q services were to involve the successful contractor evaluating products delivered under other contracts, the RFP contained a number of clauses designed to resolve problems which might arise concerning organizational conflicts of interest and which are the principal focus of ASC's concerns. For example, the solicitation contained a clause entitled "Avoidance of Potential Organizational Conflict of Interest," which defined the term organizational conflict of interest as any situation which places the contractor in a position in which its interest and the interest of the government are not the same. The clause stated in part:

"This contract requires the Contractor to perform independent evaluations and provide advice to the Government. Therefore, the Contractor shall not perform any work under this contract where it has provided (as a prime contractor or subcontractor) the computer program(s) or material being evaluated. The Contractor shall notify the Contracting Officer, in writing, in that event."

The solicitation also contained an evaluation clause relating to conflicts, entitled "Special Evaluation Factor for Contractor's Independence," which required the

^{2/} ASC also initially challenged the Navy's evaluation of another offeror--Questech, Inc.--but later failed to respond to the position taken in the agency report that the matter was academic since Questech was not in line for award ahead of ASC. Accordingly, we deem that the protester has abandoned the issue and will not consider it further. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198.

successful contractor to be different from the contractor which provided or developed the hardware, software, or systems documentation being assessed. The RFP stated that the Navy would consider as an evaluation factor "the extent to which" each offeror was precluded from performing assessments of various programs under the contract because of conflicts. Each offeror's technical score would be downgraded according to the amount of conflict, with the amount of downgrading increasing progressively as the amount of conflict increased. Specifically, the RFP stated that each offeror's score would be decreased on an exponential basis for each 2.5 percent increment (of conflict) below a perfect score (100 percent).

The illustrative example then given in the solicitation indicated that: no conflict would result in a decrement factor of 100 percent, meaning that an offeror's technical score would, in essence, be multiplied by 1, with the result that the score would be unchanged; any degree of conflict at the first increment (i.e., no greater than 2.5 percent) would translate into a "conflict score" of 97.5 percent of "perfect," and the .975 would be squared to obtain a decrement factor of .95 to discount the offeror's technical score; the next increment of conflict (from 2.5 percent through 5 percent) would translate into a conflict score of .95, which would be cubed to obtain a decrement factor of .857; and so forth, with each successive increment of 2.5 percent of conflict resulting in a decrement factor which would operate to lower an offeror's technical score exponentially. The RFP contained a table listing the 21 CDS programs that were covered by the solicitation conflict provisions.

Finally, the solicitation contained a clause entitled "Certification for Section M Evaluation of Contractor Independence" by which each offeror certified that it has or has not provided hardware, software, or system documentation, as a prime contractor or subcontractor, under any of the relevant Navy programs.

On May 26, 1988, ASC wrote the contracting officer the following question:

"Does the current performance of maintenance on the RNTDS Universal Library [part of the Navy's CDS Block 0 program] constitute a conflict of interest; i.e., if maintenance effort on the Universal Library was 20 percent of CDS Block 0 (which is [12.5] percent of the contract effort), does it constitute a [12.5] percent conflict of interest?"

As part of a June 3 letter to all offerors answering questions that had been received about the RFP, the Navy responded to ASC's inquiry as follows:

"Maintenance of the RNTDS Universal Library is a part of CDS Block O Upgrade; CDS Block O Upgrade is estimated to be 12.5 percent of the [total contract] effort, as stated in . . . the RFP. Any CDS Block O Upgrade effort involving delivery or development, by an offeror, of hardware, software or systems documentation which will be assessed under this contract constitutes a 12.5 percent conflict of interest, as stated in Section M of the RFP."

The Navy's letter closed by noting that the June 9 closing date for receipt of initial proposals was not extended and also advised offerors that "[t]he questions and answers contained in this letter do not change the RFP in any way."

On June 9 three firms submitted offers. Only Comptek certified itself as having a conflict of interest under one of the listed programs, "Fleet Support of CDS." After initial evaluations, discussions were conducted with each offeror. On September 29, 1989, the solicitation was amended a third time. On October 27 the original solicitation (as amended three times) was reissued in its entirety as RFP No. N00024-90-R-5208; on the same day, best and final offers (BAFO) were requested.

BAFOs were received on November 13. As a result of lengthy evaluations involving two panels of evaluators, ASC and Comptek received the following "final" scores:

| <u>Category</u> | <u>Comptek</u> | <u>ASC</u> |
|-----------------|----------------|------------|
| Technical Score | 50.98 | 39.84 |
| Cost Score | 23.36 | 26.63 |
| Total Score | 74.34 | 66.47 |

The evaluators then applied a decrement factor to Comptek's technical score in recognition of its certified conflict in the area of Fleet Support. In the RFP table estimating what percentage of contract effort represented each program, Fleet Support was identified as representing 5 percent. The evaluators determined that, since Comptek had only provided support for 2 of the 14 ship classes within the Fleet Support program, its extent of conflict should be 2/14 times 5 percent, or .7 percent. Since this was in the first increment of assessed conflict (i.e., below 2.5 percent),

they applied a decrement factor of .95 to the firm's technical score; as a result, Comptek's technical score was lowered to 48.43, which, when added to its cost score, resulted in an overall score of 71.79--still highest. Based on these evaluation results, Comptek was awarded a contract on March 30, 1990. ASC filed this protest on April 5.

GENERAL PROTEST CONTENTIONS

ASC's protest contains a variety of allegations concerning its view that Comptek's past and present performance on six Navy contracts presented conflicts of interest with nine CDS programs. According to the protester, these conflicts should have served under the RFP evaluation methodology to drastically reduce the awardee's score. Chief among these allegations are: (1) Comptek's admitted role in providing items for 2 of 14 ship classes of the Fleet Support program constitutes a full conflict of interest, even though the Navy improperly evaluated it as a "partial" conflict which, in the protester's view, is not permitted by the terms of the RFP; (2) likewise, in the protester's view, Comptek's role as a contractor in developing and modifying software for the Navy's Tactical Applications Group (TAG) Program constitutes a full conflict of interest for the Combat Systems Integration Support program of which the TAG is a part; and (3) Comptek's role as a contractor maintaining the RNDIS Universal Library, and in developing engineering change proposals (ECP) for the operational programs of the Library, constitutes a conflict of interest.

ANALYSIS

Concerning ASC's contention that the Navy misevaluated Comptek's proposal under the RFP's organizational conflict provisions, our Office will examine whether the evaluators' judgments were reasonable and in accord with the listed evaluation criteria; moreover, to the extent that a protest evidences disagreement with the evaluators' judgments, that disagreement itself is not a basis for sustaining the protest. Pathology Assocs., Inc., B-237208.2, Feb. 20, 1990, 90-1 CPD ¶ 292.

1. Fleet Support

ASC principally contends that the RFP precluded the evaluators from merely partially downscoring Comptek on the basis that it had certified conflicts with respect to only 2 of 14 ship classes of the Fleet Support program. In the protester's view, since the RFP indicated that Fleet Support accounted for 5 percent of the total contract effort, the Navy was required to decrement Comptek's technical score for

a full 5 percent of conflict--i.e., under the mathematical formula set forth in the RFP, by a factor of .857, instead of the .95 factor actually used.

ASC bases its position that partial conflicts are not recognized under the RFP on the Navy's June 3, 1988, response to its question about the Universal Library and the CDS Block O Upgrade program which stated, as quoted above, that any offeror providing upgrade effort involving delivery or development of hardware, software or systems documentation in that program would be assessed the full penalty.

ASC reasons that, since "any" CDS Block O Upgrade effort constitutes a full conflict of interest under that program, "any" conflict regarding Fleet Support should result in finding a full conflict of 5 percent--that portion of the RM&Q effort represented by Fleet Support.

In support of the evaluators' findings that Comptek's Fleet Support efforts constituted only a partial conflict, the Navy refers to the language of the RFP clause which states that the agency would examine the "extent" of conflict posed by an offeror's certification. The Navy also distinguishes its June 3, 1988, answer about the Block O Upgrade program from its position concerning Fleet Support by noting that the Block O program is essentially one program that is not readily segregable--whereas the Fleet Support program is comprised of a number of subsidiary programs which support several classes of ships, and which is readily segregable. Thus, in the Navy's view, while a conflict with any portion of the Block O program would likely result in a finding of a full conflict for that effort, as indicated in its June 3 response, this result would not obtain with respect to segregable programs such as Fleet Support.

In response, ASC argues that the June 3 letter was itself a response to a question which posed a hypothetical partial conflict within the Block O program, and the protester maintains that since the evaluation criteria nowhere distinguish between segregable and nonsegregable programs, the agency is, in essence, estopped from asserting that a conflict in an allegedly segregable program does not result in a finding of a full conflict for the entire program. ASC then offers its own unsupported analysis of the two programs in question in which it concludes that there is no essential difference as the Navy maintains.

In our view, the question for resolution is whether the Navy's June 3 response concerning the Block O program can reasonably be read to apply to other programs so as to amend the language in the RFP which clearly indicated that the

agency would examine the "extent" of conflict provided by an offeror's certification before downscoring its technical proposal. For the reasons set forth below, we do not believe that ASC's reading of the response to this effect is reasonable.

First, we note that, by its own terms, the June 3 response did "not change the RFP in any way." Second, we note that, by its terms, the letter literally refers solely to the Block O program and the associated amount of conflict which would be assessed for specific efforts under that program. The record shows that the Fleet Support program--unlike the Block O program--is comprised of a number of segregable subsidiary programs involving different classes of ships. We fail to see why the Navy should penalize an otherwise acceptable offeror for organizational conflicts of interest that do not in fact exist for the vast majority of segregable programs. Stated differently, penalizing a contractor for conflicts of interest beyond that necessary for impartial performance would have been, in our view, unreasonable. Thus, we find the protester's position as precluding the partial assessment of a conflict with regard to 2 of 14 ship classes within the Fleet Support program to be unreasonable, and we have no basis to disturb the evaluators' exercise of judgment in this regard.

2. TAG Program

In its comments on the initial agency report, ASC alleged, by reference to five 1986 to 1987 delivery orders, that Comptek had been tasked under an earlier Navy contract to develop modifications to existing software under the TAG Program, which is part of the overall Combat Systems Integration CDS program listed in the RFP. Accordingly, the protester argues that Comptek's work constitutes a conflict of interest which should have served to reduce the awardee's technical score.

In its supplemental agency report, the Navy reiterated its position that the TAG Program work could not constitute a conflict because the program was canceled in March of 1988. (Comptek, as an interested party, also points out that before the TAG Program was completed in 1988, it was canceled, and any material produced by the firm was archived and is no longer in operational use.) Accordingly, the Navy maintains that, since the work of the TAG Program will not be assessed under the current RM&Q contract, no conflict exists.

The protester responded to this position by referring to other examples of alleged conflicts of interest with regard

to the Combat Systems Integration area but did not address the proposition that, because the TAC Program had been canceled, Comptek's participation resulted in no conflict of interest. Thus, based on the record presented for our review on this issue, we have no basis for concluding that the agency evaluators acted unreasonably in finding as they did. See Pathology Assocs., Inc., B-237208.2, supra.

3. Universal Library

The RNTDS Universal Library is a collection of software modules, or operational programs, which are a part of the CDS Block O Upgrade, and which are developed by contractors other than Comptek; Comptek is, however, tasked in two of its Navy contracts relating to the Library with "maintenance" of the collection. The protester notes in particular that Comptek is tasked to prepare ECPs "as performance deficiencies in the operational program . . . are identified throughout the duration of this job." ASC argues that the preparation of such ECPs necessarily constitutes a conflict of interest because the RFP under protest explicitly requires the provision of RM&Q engineering support for the CDS Block O Universal Library.

The Navy points out that Comptek's role in preparing ECPs to remedy deficiencies in the Library's resident programs developed by other contractors is in the nature of an assessment of the quality of those elements of the Library and that, in writing ECPs, Comptek is documenting problems that it perceives and proposed solutions to those problems. In assessing the protester's allegations in this regard, the Navy evaluation panels reviewed Comptek's job orders for maintenance of the Library and concluded that Comptek had not provided or developed hardware, tactical operations software, or operational systems documentation. The Navy further points out with regard to ASC's allegations about the Library ECP process, and ECPs in general, that the ECPs proposed modifications needed in software or hardware, and that it is the implementation of such ECPs by contractors other than Comptek which are subject to review under the present RM&Q efforts. Thus, the agency concludes that the awardee has no conflict of interest within the terms of the RFP evaluation criteria.

In response, ASC basically contends that the Navy's analysis is deficient because the RM&Q work to be performed in evaluating the implementation of ECPs will, in its view, necessarily involve an assessment of whether or not Comptek's own ECP documentation of hardware and software problems were correct or not.

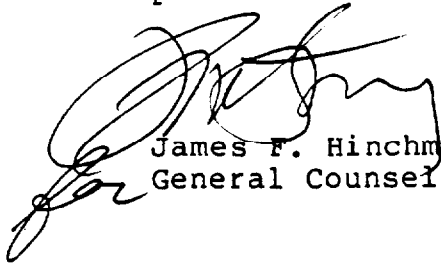
In our view, and as the Navy points out, the RM&Q work that Comptek would now be expected to perform with respect to the Library is, in essence, the same type of work it has been performing in the past documenting problems with the resident software. We note that the RFP essentially defined an organizational conflict of interest as the previous furnishing of computer programs being evaluated by an offeror under other contracts. While the protester, in its final comments, likens Comptek's past Library ECP work to designing a product it will later review, this argument, in our view, does not address the essential conclusion of the evaluators that Comptek under its Library contracts simply had not provided any software that would be evaluated under this contract. Thus, at best, we find that the protester has established only that it disagrees with the evaluators' conclusions with respect to whether a conflict of interest exists by virtue of Comptek's Library maintenance, and, as indicated earlier, such a disagreement does not serve to establish that the evaluators' judgment was unreasonable, where as here, our own review does not disclose that their judgment was without foundation. Pathology Assocs., Inc., B-237208.2, supra.

OTHER ISSUES

In addition to these principal concerns, the protester has summarily alleged conflicts with other CDS programs by reference to portions of various contractual documents purporting to show that the tasking under those contracts involved Comptek's production of items, especially ECPs, which were to be assessed under the RM&Q effort. In response to ASC's protest, the Navy reconvened its technical panels to reevaluate Comptek's performance under the six contracts in question; the panels concluded that, although the awardee had provided documentation or software used to support the execution of various CDS programs, in no case did the awardee provide systems hardware, operational software or systems documents which the firm will be called upon to assess under its RM&Q contract. In this regard, Comptek has also provided this Office with an extensive analysis of its performance under the contracts in question which reaches the same conclusion. We have examined the documentation provided by the Navy and Comptek and note that, in contrast to the summary presentation provided by ASC (which merely recites portions of contractual documents without explaining their import to any alleged conflict of interest issues, except to conclude that a conflict exists), the agency and the awardee have presented cogent explanations as to why Comptek's past performance does not constitute conflict of interests as alleged. Thus, we have no basis to question the agency's findings.

CONCLUSION

Based on the foregoing analysis of the three principal issues advanced by ASC, and our review of the agency's and the awardee's responses to the protester's other allegations--which were, as noted, not developed beyond the point of making conclusory statements without detailing why those conclusions were reached--we find that the evaluators acted reasonably in reaching their conclusions. Accordingly, the protest is denied.



James F. Hinchman
General Counsel